

D/E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALBERT BURNEY,

Plaintiffs,

-against-

WARDEN L. RIVERA,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

ORDER

12-CV-4962 (NGG) (LB)

On October 1, 2012, Plaintiff Albert Burney filed this action against Defendant Warden L. Rivera ("Rivera") while incarcerated at Anna M. Kross Center on Rikers Island. (Compl. (Dkt. 1).) Plaintiff's Complaint alleges violation of his constitutional rights based on being subjected to "bullpin theory" [sic], provided fewer than three meals per day, and not allowed to sleep in his bed. (Id.) On April 3, 2013, the court granted Plaintiff's application to proceed in forma pauperis, but dismissed his claims against the City of New York and the New York City Department of Corrections. (Mem. & Order (Dkt. 6).) The case was referred to Magistrate Judge Lois Bloom for pretrial supervision. (Id.)

On September 20, 2013, Rivera filed a request for a pre-motion conference in anticipation of filing a motion to dismiss the Complaint as required by the court's Individual Rules of Practice. (Sept. 20, 2013, Ltr. (Dkt. 12).) The court denied the request as unnecessary and set a briefing schedule for Defendant's motion to dismiss. (Sept. 26, 2013, Order (Dkt. 13).) That Order was sent to Plaintiff at his address of record by the Clerk of the Court, but was returned as undeliverable and marked "Inmate not in system." (Dkt. 15.) Thereafter, Judge Bloom reviewed the New York City Department of Correction's Inmate Lookup Service and

learned that Plaintiff had been released from custody. (Nov. 6, 2013, Order (Dkt. 16).) The court had not had any contact with Plaintiff since June 2013. (Id.)

On November 5, 2013, Judge Bloom issued an Order directing Plaintiff to provide the court with his current address by December 6, 2013, and warning him that his case would be dismissed as abandoned should he fail to do so. (Id.) To date, Plaintiff has not provided the court with an updated address.

On April 25, 2014, Judge Bloom issued a Report and Recommendation ("R&R") recommending that Plaintiff's action should be dismissed without prejudice as abandoned, noting that it would be futile to let this case continue. (R&R (Dkt. 17).)

No party has objected to Judge Bloom's R&R, and the time to do so has passed. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). Finding no clear error, the court ADOPTS the R&R in its entirety, see Porter v. Potter, 219 F. App'x 112 (2d Cir. 2007), and Plaintiffs' Complaint therefore is DISMISSED without prejudice.

The Clerk of Court is respectfully directed to close the case.

SO ORDERED.

Dated: Brooklyn, New York
May 21, 2014

s/Nicholas G. Garaufis
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NICHOLAS G. GARAUFIS~~
United States District Judge